



FEDERAL ELECTION COMMISSION
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January 29, 2003

AGENDA ITEM

For Meeting of: 1-30-03

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas
Commissioner 

SUBJECT: Suggested corrections to Forms and Instructions (Agenda Documents 03-08 and 03-09)

Forms:

On p. 18, revise the certification to read: "Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or (if the reporting entity is not a political party committee) any political party committee or its agent."

[Comment: This corrects some grammar and simplifies things a bit. It also pulls together the language at 2 U.S.C. §§ 431(17)(B), 434(b)(6)(B)(iii), and 441a(a)(7)(B)(i) and(ii). Arguably, § 434(b)(6)(B)(iii) and unchanged 11 CFR 104.3(b)(3)(vii)(B) don't require certification regarding party involvement, but under BCRA, there now is a valid issue of coordination with the party any time an express advocacy communication is disseminated.]

On p. 29, revise the certification to read: "Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or any political party committee or its agent. In addition, (if the independent expenditures reported herein were made by a corporation) I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations."

Instructions:

On p. 20, line 9, change "Filing" to "Format"

'made.' Just taking out this language and relying on the explanation that appears on pp. 97-101 should suffice. Moreover, the 'every date' phrase, though in the E & J, is very confusing. The Forms Committee revisions would not be needed.]

On p. 102, line 21, move the comma after "agent" to follow "of"

On p. 105, line 13, capitalize "(c)"

On p. 109, line 1, add "and" before "Exempt"

On p. 109, line 19, delete "expenses for allocable"

On p. 109, line 21, add "allocable" before "fundraising" and "direct candidate support"

On p. 124, line 10, change "a" to "an"

On p. 127, line 13, delete the comma

On p. 128, line 14, change "as defined" to "covered"

[Comment: The cited definition is not to the "public communication" definition.]

On p. 139, delete lines 11-13

[Comment: This too raises so many complications, we'll never unravel things. Note that the date triggering reporting (date of first distribution when a certain amount has aggregated in the case of 48 hour and 24 hour reporting) may differ from the date we want to see reported on Schedule 5 E (date of disbursement or contract obligation?).]

On p. 143, line 8, delete "its"

On p. 147, line 16, delete "(as described above)"

[Comment: See the change suggested for p. 139.]

On p. 155, line 11, add a period after "distributed"

On p. 165, line 6, add "(1)" after "have"

On p. 52, line 12, add “and” before “generic”

On p. 52, line 14, add “other” before “allocated”

On p. 66, line 17, delete “brought”

On p. 69, lines 9-12, delete “Note: National party committees may not make independent expenditures in connection with a general election campaign for the office of President of the United States. 11 CFR 110.7(a)(5)”

[Comment: The cited regulation, and the entire section where it was contained, was deleted in the BCRA rulemaking. See new 11 CFR 109.36, which takes a different tack.]

On p. 71, lines 17-18, change to “. . . public communications qualifying as federal election activity under 11 CFR 100.24(b)(3) and the total amount . . .”

[Comment: We don’t want to suggest all public communications would be referenced here.]

On p. 74, line 15, delete “presumptively”

On p. 84, lines 2-3, delete “, if the communications are disseminated during the time period referenced above”

[Comment: This type of federal election activity is not qualified by when it occurs. 2 U.S.C. § 431(20)(A)(iii); 11 CFR 100.24(b)(3).]

On p. 97, lines 13-16, change to “Any political committee that makes independent expenditures must report such independent expenditures on Schedule E for the applicable reporting period. Special additional reporting procedures apply to expenditures aggregating \$1,000 or”

On p. 98, line 5, add “publicly distributed or otherwise” before “publicly disseminated”

On p. 98, line 5, insert after “disseminated.” the citation “See Explanation and Justification for 11 CFR 104.4(f).”

[Comment: This would be done in lieu of the Forms Committee suggestions for p. 100.]

On p. 100, delete lines 1-8

[Comment: This gets into the complicated situation we now have whereby the ‘date of distribution if a certain aggregation has been reached’ concept applies for 48 hour and 24 hour reporting. It is not clear what we have in mind for regular Schedule E reporting. At a minimum, we have moved away from defining when an independent expenditure is